

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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**MARK J. PATNOD,**  
**Petitioner,**

**v.**

**DAVID NOLAN,**  
**Respondent.**

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**Civil Action No. 04-10865-GAO**

**ANSWER**

The respondent, David Nolan, Superintendent of M.C.I. Cedar Junction at Walpole, Massachusetts, answers the numbered paragraphs of the above-captioned amended petition for writ of habeas corpus as follows:

**1-8. Admitted.**

**9(a). Admitted.**

**9(b). Admitted.**

**9(c) Admitted.**

**9(d). The respondent is submitting documents from the petitioner's state court proceedings including the briefs, record appendixes and court decisions from his direct appeal. See Commonwealth v. Patnod, 57 Mass. App. Ct. 1110, 784 N.E. 2d 50 (2003). The record, which clearly indicates the specific grounds raised, speaks for itself.**

**9(e)(1). Admitted.**

**9(e)(2). Admitted.**

**9(e)(3). Admitted.**

- 9 (e)(4). The respondent is submitting documents from the petitioner's state court proceedings including his application for leave to obtain further appellate review which was denied. Commonwealth v. Patnod, 439 Mass. 1104, 787 N.E. 2d 1058 (2003) The record, which clearly indicates the specific grounds raised, speaks for itself.
10. Admitted.
- 11 (a)(1)-(a)(6). Admitted
- 11(c)(1). Admitted.
- 11(c)(2). Admitted.
- 12A-12D. These paragraphs contains conclusions of law requiring no response. To the extent that the petitioner presents facts, they are denied.
14. The respondent is without knowledge or information sufficient to form a belief as to the truth of this paragraph.
- 15(a)-(g). Admitted.
16. Admitted.
17. The respondent is without knowledge or information sufficient to form a belief as to the truth of these paragraphs.

Pursuant to Rule 5 of the Rules Governing 28 U.S.C. §2254 cases, the respondent is filing a Supplemental Answer with the following documents from the petitioner's state court proceedings:

1. Brief of Appellant on Appeal to the Massachusetts Appeals Court (A.C. No. 01-P-182)
2. Appendix to Brief of Appellant on Appeal to the Massachusetts Appeals Court (A.C. No. 01-P-182)
3. Brief of the Commonwealth/Appellee (A.C. No. 01-P-182)

4. Commonwealth v. Patnod, 57 Mass. App. Ct. 1110, 784 N.E. 2d 50 (2003)(Unpublished).
5. Petition of Defendant-Appellant Mark J. Patnod For Further Appellate Review in the Supreme Judicial Court (FAR-13314).
6. Docket Sheet from Commonwealth v. Patnod, 439 Mass. 1104, 787 N.E. 2d 1058 (2003) indicating the FAR application was denied on April 30, 2004.

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**DEFENSES**

1. The state court adjudication of the petitioner's claims was not contrary to nor an unreasonable application of clearly established Supreme Court law nor is it based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. See 28 U.S.C. § 2254(d)(1).
2. The petition raises a claim based purely on state law which is not cognizable on federal habeas review.
3. The petitioner has failed to exhaust state remedies on each and every claim (or part thereof) asserted. See 28 U.S.C. § 2254(b).
5. The petitioner has failed to state a claim upon which relief under 28 U.S.C. § 2254 can be granted.
- (6) The petitioner cannot rebut the presumption of correctness accorded to the state court's factual determinations underlying his purportedly federal constitutional claims. See 28 U.S.C. § 2254(e)(1).
- (7) The Petition should be denied if and to the extent that the relief sought would create or apply a new rule of constitutional law that cannot be applied retroactively on collateral review.
- (8) The respondent respectfully reserves the right to amend or supplement this Answer in the future should that need arise.

Respectfully submitted,

THOMAS F. REILLY  
ATTORNEY GENERAL  
/s/ Annette C. Benedetto  
Assistant Attorney General  
Criminal Bureau

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**CERTIFICATE OF SERVICE**

**I hereby certify that this document filed through the Electronic Case Filing system will be sent electronically to the registered participant as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on the date set forth below.**

**Dated: February 3, 2006**

**/s/ Annette C. Benedetto  
Assistant Attorney General**